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WESTERN DISTRICT OF LOUISIANA

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

UNITED STATES OF AMERICA : DOCKET NO. 2:11 CR 00059-001

VS. : JUDGE MINALDI

ELIZABETH MARIA CISNEROS : MAGISTRATE JUDGE KAY

Memorandum Ruling

Presently before the court is the defendant's objection to the Presentence Report ("PSR") prepared by the Probation Department. In her objection, Cisneros argues that she should have been considered a minor participant and given a 4-point reduction for a minor role.

The court's determination whether to apply the minor role adjustment "is heavily dependent upon the facts of the particular case," and "the court, in weighing the totality of the circumstances, is not required to find, based solely on the defendant's bare assertion, that such a role adjustment is warranted." § 3B1.2, comment. (n.3(C)). It is the defendant's burden to establish by a preponderance of the evidence that she is entitled to the minor role reduction. *See United States v. Garcia*, 242 F.3d 593, 597 (5th Cir.2001). It is not sufficient for a defendant to show that she was less involved than other participants; rather, she must show that she was "peripheral to the advancement of the criminal activity." *United States v. Martinez-Larraga*, 517 F.3d 258, 272 (5th Cir.2008); *United States v. Loredo*, 420 Fed.App'x. 425, 426-427 (5th Cir. 2011).

Cisneros asserts that she was recruited as a drug courier by a large drug trafficking organization and "was therefore left substantially less culpable than the average participant of said

organization." The Probation Department responded that Cisneros was held accountable for only the activity listed in the indictment and neither the law enforcement reports nor the stipulated factual basis indicate that she was recruited by a large drug trafficking organization.

Cisneros must offer evidence in support of her allegations to effectively disprove the PSR and the argument that she did not play a minor role. Cisneros has not proven that her role in the offense was peripheral, therefore, based on the record, a minor-role adjustment is not warranted. *See Villanueva*, 408 F.3d at 203-04 & n. 9. This objection is OVERRULED.

Lake Charles, Louisiana, this 25 day of September, 2011.


PATRICIA MINALDI
UNITED STATES DISTRICT JUDGE